IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

FAO.No. 53 of 2007()

AGAINST THE ORDER DATED 24/01/2006 IN EP.76/01,EA.79/05 IN OS.521/1993 of SUB COURT, OTTAPPALAM

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: APPELLANT/PETITIONER:

AHAMMED, S/O.PALLAKALATHIL MUHAMMED,
KAPPOOR AMSOM, KOZHIKKARA DESOM,
OTTAPALAM TALUK, PALAKKAD DISTRICT, REP. BY
POWER OF ATTORNEY HOLDER, MUHAMMED S/O.AHAMMED,
PALLAKALATHIL HOUSE, KAPPOOR AMSOM, KOZHIKKARA
DESOM, OTTAPALAM TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.SANTHEEP ANKARATH

RESPONDENTS:

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1. GEORGE YESUDASAN,
S/O.THARAYL PADEETTATHIL GEORGE,
THOZHIYOOR VILLAGE, VENGARA MURI,
KARUNAGAPPILLY TALUK.

2. T.K. ABDUL AZEEZ, THEKKEPEEDIKAKKAL
KALATHIL @ KADEEJA VILLA, THOZHUVASOOR AMSOM,
KATTIPARUTHY VILLAGE, TIROOR TALUK,
MALAPPURAM DISTRICT.

BY ADV. SRI.TONY PETTAH
SRI.THAMBI JACOB

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 02/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Kurian Joseph & T.R. Ramachandran Nair, JJ.

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F.A.O.NO.53 OF 2007

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Dated this the 2nd day of July, 2007

JUDGMENT

T.R. Ramachandran Nair, J.

This appeal is filed challenging the order dated 24.1.2006 in E.A. No.59/2006 in E.A. No.79/2005 in E.P. No.76/2001 in O.S. No.521/1993 on the file of the Sub Court, Ottappalam. The appellant is the petitioner in E.A. No.59/2006.

2. The decree in question is passed in a suit for realisation of Rs.2,74,704/-. The decree was passed by the Sub Court, Kollam and was transmitted to the Sub Court, Ottappalam for execution. The appellant is the respondent in a petition for removal of obstruction of delivery of the property. He was appearing through the power of attorney holder.

3. The appellant's case is that he had purchased 83 cents of properties by registered sale deed from one Abdul Jaleel on 15.1.1994. The vendor of the appellant had purchased the properties from the judgment debtor by a registered sale deed dated 29.5.1993. According to him, from the date of purchase, he had been in possession and ownership of the properties. He being a bonafide purchaser of the properties for value,he is aggrieved by the

steps taken in execution against the properties. He had raised obstruction when the Amin from the court came for effecting delivery.

4. E.A. No.56/2005 is the one filed by him detailing his claim over the property. It is thereafter that the decree holder filed a petition under Order XXI Rule 97 of the Code of Civil Procedure to remove the obstruction raised by the appellant and to deliver the properties to him.

5. It is the case of the petitioner that his father who was the power of attorney holder, is aged and sick and was laid up. Therefor, he could not contact the counsel in time for preparing the objection in the execution application. On 20.12.2005 even though the counsel for the appellant sought time to file counter affidavit, that was declined and the execution application was allowed without adjudication and the property was directed to be delivered on 31.1.2006. Thereafter, through the power of attorney holder, E.A. No.59/2006 was filed to set aside the order. The court below rejected the petition by the order impugned.

6. Learned counsel for the appellant submitted that the appellant could not file the counter and contest the matter on merits, as his father who was aged 76, was having rheumatic complaints and could not meet the counsel in time. Since the appellant has raised his rights to the property to be established in the execution application, a further opportunity may be

allowed to contest the matter on merits, in the interest of justice.

7. We heard learned counsel for the respondents also. The counsel for the decree holder opposed the prayer of the appellant.

8. Having extensively heard the rival submissions, we are of the view that in the interest of justice an opportunity has to be given to the appellant to have the matter adjudicated on merits, but on terms. Accordingly, the impugned order dated 21.1.2006 in E.A. No.59/2006 in E.A. No.79/2005 in E.P. No.76/2001 in O.S. No.521/1993 on the file of the Sub Court, Ottappalam is set aside on condition of payment of Rs.3,000/- as cost through the counsel for the first respondent within two weeks.

9. The parties will appear before the court below on 23.7.2007. The court below will dispose of the matter expeditiously.

The appeal is disposed of in the above terms. No costs.

(Kurian Joseph, Judge.)

(T.R. Ramachandran Nair, Judge.)

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